

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VANESSA SIMMONDS,

Plaintiff,

and

GEEKNET, INC. (f/k/a VA LINUX
SYSTEMS, INC.), a Delaware corporation,

Nominal Plaintiff,

v.

CREDIT SUISSE SECURITIES (USA) LLC,
a Delaware limited liability company,

Defendant.

Case No. 2:12-cv-01937 TSZ

NOTICE OF RELATED CASES

Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) respectfully submits this Notice of Related Cases pursuant to Local Civil Rule 3(f), under which “a party must file a Notice of Related Case alerting the court as soon as it knows or learns that another action that was or is pending in this district may be related to the party’s case.” As set forth below, this action (“Geeknet II”) is related to *Simmonds v. Credit Suisse Securities (USA) LLC*, No. 2:07-cv-01583-JLR (“Geeknet I”), part of a set of 54 coordinated cases previously filed in 2007 and litigated before Judge James L. Robart. *See In re Section 16(B) Litigation*, No. 2:07-cv-01549-JLR (W.D. Wash.) (“Coordinated Cases”). In accordance with Local Civil

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Case No. 2:12-cv-01937 TSZ

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1 Rule 3(f), this action is related to *Geeknet I* because it (1) concerns substantially the same
 2 “parties,” “transaction,” and “event” as *Geeknet I*, and (2) “it appears likely that there will be an
 3 unduly burdensome duplication of labor and expense or the potential for conflicting results if
 4 the cases are conducted before different judges.”

5 BACKGROUND

6 *Geeknet I* and the rest of the Coordinated Cases were shareholder actions brought by
 7 plaintiff Vanessa Simmonds in 2007, alleging that various defendant banks violated
 8 Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b), in connection with
 9 the underwriting of certain initial public offerings (“IPOs”) in late 1999 and early 2000.
 10 Specifically, in *Geeknet I*, Simmonds alleged that Credit Suisse violated Section 16(b) in
 11 connection with the 1999 IPO of Geeknet, Inc.¹

12 In July 2008, Defendants moved to dismiss, and following extensive briefing and oral
 13 argument, Judge Robart dismissed all of the Coordinated Cases in an order dated March 12,
 14 2009. *See In re Section 16(B) Litigation*, 602 F. Supp. 2d 1202 (W.D. Wash. 2009).
 15 Specifically, Judge Robart dismissed *Geeknet I*, along with 23 other cases, for failure to satisfy
 16 the applicable statute of limitations. *Id.* at 1216-19. Judge Robart dismissed the remaining 30
 17 cases without prejudice on the ground that the demand letters sent to the nominal defendant
 18 issuers had been inadequate. *Id.* at 1211-15.

19 On appeal, in a decision dated December 2, 2010, the Ninth Circuit affirmed Judge
 20 Robart’s dismissal of 30 of the cases, agreeing that Simmonds’ demand letters were inadequate,
 21 but held that the dismissal be with prejudice. *See Simmonds v. Credit Suisse Sec. (USA) LLC*,
 22 638 F.3d 1072, 1099 (9th Cir. 2010). The Ninth Circuit reversed as to the other 24 cases
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25 ¹ At the time of the 1999 IPO, Geeknet was known as VA Linux Systems, Inc. In December
 26 2001, VA Linux changed its name to VA Software Corporation, and then in May 2007 changed
 27 its name to SourceForge, Inc., the successor issuer entity identified in the October 2007
Geeknet I complaint. In November 2009, SourceForge changed its name to Geeknet, Inc., the
 successor issuer entity identified in the *Geeknet II* complaint.

1 (including *Geeknet I*), holding that Simmonds' claims were not time-barred under then-
2 prevailing Ninth Circuit law. *Id.*

3 The Supreme Court granted certiorari on the statute-of-limitations issue, and on
4 March 26, 2012, vacated the Ninth Circuit's statute-of-limitations holding in the 24 cases, and
5 remanded the statute of limitations issue for further consideration. *See Credit Suisse Sec.*
6 *(USA) LLC v. Simmonds*, 132 S. Ct. 1414, 1421 (2012). On May 15, 2012, the Ninth Circuit
7 remanded the 24 cases to Judge Robart for further consideration of the statute of limitations
8 issue in light of the Supreme Court's decision and the adequacy of plaintiffs' demand letter in
9 light of its own prior decision, and ordered the district court to dismiss the other 30 actions with
10 prejudice. *See Simmonds v. Credit Suisse Sec. (USA) LLC*, 678 F.3d 1139 (9th Cir. 2012).

11 On June 11, 2012, plaintiff purported to voluntarily dismiss each of the Coordinated
12 Cases "with prejudice as to the adequacy-of-the-presuit-demand issue . . . and without prejudice
13 as to all other issues." *See In re Section 16(B) Litigation*, No. 2:07-cv-01549-JLR, Dkt. # No.
14 104 (W.D. Wash.). On June 20, 2012, defendants filed a response to plaintiff's notices of
15 dismissal, submitting that under Federal Rule of Civil Procedure 41 plaintiff's attempt in her
16 notices to "parse the dismissal on an issue-by-issue basis [was] legally inoperative" and that her
17 dismissal should be deemed to be with prejudice. *Id.*, Dkt. # 105 at 2. On July 8, 2012, Judge
18 Robart held that "the effect of Ms. Simmonds's notices of dismissal (i.e. whether they are with
19 or without prejudice) should be made if and when she initiates a second action that includes the
20 same claim." *Id.*, Dkt. # 108 at 5.

21 Plaintiff filed the instant complaint—"a second action that includes the same claim"—
22 on November 2, 2012.

23 DISCUSSION

24 *Geeknet II* is related to *Geeknet I* under the standards set forth in Local Civil Rule 3(f).
25 *See* Local Rules W.D. Wash. LCR 3(f)(2) (effective Dec. 1, 2012) ("An action is related to
26 another when the actions: (A) concern substantially the same parties, property, transaction, or
27 event; and (B) it appears likely that there will be an unduly burdensome duplication of labor

1 and expense or the potential for conflicting results if the cases are conducted before different
2 judges.”)

3 **First**, *Geeknet II* concerns substantially the same “parties,” “transaction,” and “event”
4 as *Geeknet I*. Indeed, the complaints in both cases are materially identical. Both complaints
5 name the same parties (Simmonds and Credit Suisse),² and both complaints allege that Credit
6 Suisse violated Section 16(b) by supposedly garnering impermissible “short-swing” profits in
7 connection with its underwriting of the 1999 IPO of Geeknet, Inc. (f/k/a VA Linux, Inc.).

8 **Second**, “it appears likely that there will be an unduly burdensome duplication of labor
9 and expense or the potential for conflicting results if the cases are conducted before different
10 judges.” Judge Robart has already devoted substantial resources over a number of years to
11 adjudicating *Geeknet I* and the 53 other Coordinated Cases, including ruling on numerous
12 motions and devoting many hours of time to conferences and legal argument. Credit Suisse
13 expects that many if not all of the issues previously addressed to Judge Robart in *Geeknet I* will
14 be presented again in *Geeknet II*, including (1) whether Simmonds’ June 11, 2012 voluntary
15 dismissal of *Geeknet I* before Judge Robart was “with prejudice”; (2) whether Simmonds’
16 demand letter was inadequate; (3) whether Simmonds’ claims fail under the statute of
17 limitations; and (4) whether Simmonds’ complaint is subject to dismissal for failure to state a
18 claim for a violation of Section 16(b).

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26 ² Lehman Brothers, which was also named as a defendant in *Geeknet I*, filed for bankruptcy in
27 2008. It is named as a non-party group member in the present action.

1 **CONCLUSION**

2 For the foregoing reasons, this action is related to *Geeknet I* pursuant to Local Civil
3 Rule 3(f) and reassignment of this action to Judge Robart, who already has familiarity and
4 experience with the issues, will likely “avoid duplication of labor and expense” and will serve
5 to conserve finite judicial resources.

6 DATED: December 3, 2012

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CERTIFICATE OF SERVICE

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 3rd day of December, 2012, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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